

REMARKS/ARGUMENTS

Claims 1-38 were pending, with claims 1-5, 11-14, 18, 20, 23, 26-30, 35, 39, 47 and 48 being examined and the remaining claims being subjected to an election of species requirement. Applicants gratefully acknowledge the indicated allowability of claims 19, 21, and 22. The claims have been amended, canceled and new claims added as noted above. Reexamination and reconsideration of the claims as amended, are respectfully requested.

As an initial matter, Applicants note that new claims 49-52 have been added. Independent claim 49 includes all limitations found in dependent claim 21. As this dependent claim was indicated as being allowable, Applicants believe that new claims 49-52 are allowable and request that they be passed to issue at an early date.

As a further initial matter, Applicants note that the rejection of claim 35 for lack of written description is now moot since claim 35 has been cancelled.

Applicants thank Examiners Roane and Gibson for the helpful and courteous interview held on January 21, 2004. At that interview, Applicant's representative demonstrated the mechanical operation of an electrosurgical tool incorporating the features of the present invention. The preferred aspects of the device include, for example, a three-part structure including an electrode, an electrically conductive temperature-sensitive variable resistance material, and a conductive material coupled to a voltage source. Applicant's representative noted that Yates '366 as well as all other art or record fails to describe such a structure where the temperature sensitive material, typically a PTC material, is located between a conductive surface attached to the Rf generator and an electrode which will directly contact the tissue. Yates '366 as well as Shaw '482 and Goble et al. '224 cited by the Examiner during the interview, fail to disclose such a structure. Independent claims 1 and 18 have now been amended to recite such a structure and its use. As such structure and use are not described in the art of record, applicants believe that all pending claims are now in condition for allowance and request that the claims be passed to issue at an early date.

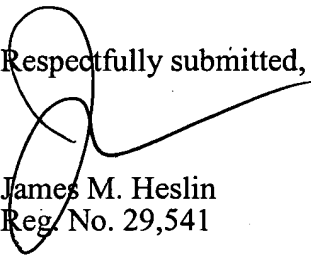
Applicants note that they are submitting an Information Disclosure Statement to formally cite both the Shaw '482 and Goble et al. '224 patents herein.

Appl. No. 10/032,867
Amdt. dated February 10, 2004
Reply to Office Action of November 6, 2003

PATENT

If for any reason the Examiner believes that a telephone conference would in any way expedite prosecution of the subject application, the examiner is invited to telephone the undersigned at 650-326-2400.

Respectfully submitted,


James M. Heslin
Reg. No. 29,541

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 650-326-2400
Fax: 415-576-0300
Attachments
JMH:jlm/jke
60135293 v1